

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 24, 2021

1:32 p.m.

MEMBERS PRESENT

Senator Lora Reinbold, Chair
Senator Mike Shower, Vice Chair
Senator Shelley Hughes
Senator Robert Myers
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Senator Peter Micciche

COMMITTEE CALENDAR

CONFIRMATION HEARING:

Attorney General, Department of Law
Treg Taylor - Anchorage

- HEARD AND HELD

SENATE BILL NO. 9

"An Act relating to alcoholic beverages; relating to the regulation of manufacturers, wholesalers, and retailers of alcoholic beverages; relating to licenses, endorsements, and permits involving alcoholic beverages; relating to common carrier approval to transport or deliver alcoholic beverages; relating to the Alcoholic Beverage Control Board; relating to offenses involving alcoholic beverages; amending Rule 17(h), Alaska Rules of Minor Offense Procedure; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

SENATE JOINT RESOLUTION NO. 1

"An Act relating to alcoholic beverages; relating to the regulation of manufacturers, wholesalers, and retailers of alcoholic beverages; relating to licenses, endorsements, and permits involving alcoholic beverages; relating to common carrier approval to transport or deliver alcoholic beverages; relating to the Alcoholic Beverage Control Board; relating to offenses involving alcoholic beverages; amending Rule 17(h), Alaska Rules of Minor Offense Procedure; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

TREG TAYLOR, Designee
Attorney General
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Testified as Attorney General Designee, Department of Law.

MIKE GERAGHTY, Attorney; representing self
Anchorage, Alaska

POSITION STATEMENT: Spoke as invited testifier.

CHARLES MCKEE, representing self
Anchorage, Alaska

POSITION STATEMENT: Spoke on a matter unrelated to the confirmation hearing.

ANDREE MCLEOD, Good Government Director
Alaska Public Interest Research Group
Anchorage, Alaska

POSITION STATEMENT: Testified with concerns about Treg Taylor, attorney general designee.

THERESA OBERMEYER, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to Treg Taylor, attorney general designee.

DAVID CARTER, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to Treg Taylor, attorney general designee.

JULIE SMYTH, representing self
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to Treg Taylor, attorney general designee.

ACTION NARRATIVE

[1:32:57 PM](#)

CHAIR LORA REINBOLD called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Kiehl, Myers, Hughes, Shower, and Chair Reinbold.

CONFIRMATION HEARING

Attorney General, Department of Law

[1:33:33 PM](#)

CHAIR REINBOLD announced the consideration of the Governor's Appointee for Attorney General, Department of Law.

[1:34:30 PM](#)

TREG TAYLOR, Designee, Attorney General, Department of Law, Anchorage, Alaska, said he grew up in Southern Alberta, Canada. His family lived on the Kainai Nation Reservation for several years when his parents taught school there. He stated that he has fond memories of the Kainai, one of the three tribes comprising the Blackfoot Confederacy. He said he learned a deep respect for culture and traditions different from his own. He has always been drawn to public service. He related his hero has always been his grandfather, who served in the U.S. Army Air Corps during WWII and was stationed in Alaska. He elaborated on his relationship with his grandfather.

ATTORNEY GENERAL DESIGNEE TAYLOR said he moved to Iowa with his mother when his parents divorced. He later attended the U.S. Air Force Academy. He described some of his experiences at the academy that led him to serve on a religious mission in the Canary Islands and his struggles to decide whether to sign the acceptance letter to continue his U.S. Air Force Academy service. He recalled his faith led him to that decision. He elaborated on how he met his wife, worked several summers in Alaska, attended college and drove up the Alaska-Canada Highway (ALCAN) to move to Alaska. He elaborated on his family life.

ATTORNEY GENERAL DESIGNEE TAYLOR reviewed his work history. He practiced in commercial litigation, representing the state, the Municipality of Anchorage, energy companies and many other businesses in Alaska. He was hired by DeLisio Moran Geraghty & Zobel.

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ATTORNEY GENERAL DESIGNEE TAYLOR stated he worked at McKinley Capital Management, LLC from January 2008 to December 2014. One of his primary roles was to help the company navigate the rapidly changing investment management regulatory schemes worldwide. He left to work as Senior Corporate Counsel for Arctic Slope Regional Corporation (ASRC) from January 2015 to December 2018. He was then asked to join the Department of Law, as the Civil Division's Deputy Director in December 2018.

ATTORNEY GENERAL DESIGNEE TAYLOR listed his community activity participation.

[1:45:40 PM](#)

ATTORNEY GENERAL DESIGNEE TAYLOR stated that not only does Alaska have the highest rate of sex crimes, but its sexual assault rate is almost double the rate of any other state. He vowed the state has determined to do everything possible to address this epidemic. Until this issue is resolved, the state will be hobbled. He acknowledged this would not be an easy problem to address but he will work to make Alaska a better place for Alaskans.

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CHAIR REINBOLD disclosed that she helped Mr. Taylor campaign for the school board in 2008.

She asked if he is confirmed if he would consider himself employed by the governor or the people of Alaska.

ATTORNEY GENERAL DESIGNEE TAYLOR answered that he swore an oath to the U.S. Constitution and the Alaska Constitution. The Alaska Constitution begins with "We the people of Alaska ..." so ultimately, his commitment is to the people of Alaska. He said he is also employed by the state at the governor's request. In further response, he agreed he would work for the people of Alaska.

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CHAIR REINBOLD asked if the emergency powers of the executive branch were intended to be used for short periods and whether the Alaskans' civil liberties could be infringed upon for the greater good of Alaskans.

ATTORNEY GENERAL DESIGNEE TAYLOR said the Alaska Disaster Act was principally designed to allow the governor to rapidly respond to acute disasters such as earthquakes. Although it was not intended for an extended pandemic, the Act gave the governor broad authority to respond.

[1:48:59 PM](#)

CHAIR REINBOLD recalled that he previously acknowledged that he reviewed mandates to identify constitutional concerns.

ATTORNEY GENERAL DESIGNEE TAYLOR replied that he reviewed the disaster declaration for constitutional or other legal issues.

CHAIR REINBOLD asked if the mandates can infringe upon Alaskans' civil liberties for short periods for the good of all Alaskans.

ATTORNEY GENERAL DESIGNEE TAYLOR answered yes. The intent of the Alaska Disaster Act is to give the governor the authority to take actions that sometimes infringe upon individual civil liberties.

[1:50:15 PM](#)

SENATOR HUGHES asked if it would be appropriate for the legislature to limit the governor's powers in statute to create checks and balances related to the mandates, such as limiting the length of time. She asked if it would be appropriate for the legislature to make determinations on the necessity to continue the mandates and if he would advise the governor to support it.

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ATTORNEY GENERAL DESIGNEE TAYLOR responded that after any use of a disaster declaration, it would be good for the legislature to go back to assess any actions taken and make suggestions to the governor. He said he would support this effort.

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SENATOR KIEHL said he previously expressed concern with the serial disaster declarations. He offered his view that a separation of powers issue arose when the legislature delegated its authority to the governor and reserved to itself the ability to pass on how long the disaster declarations could be in effect. The governor issued a series of declarations giving a

variety of reasons, which he briefly listed. He asked Mr. Taylor if he saw any separation of powers issues. He asked how he would advise the governor as to the constitutionality of serial disaster declarations, if not convening the legislature after 30 days.

ATTORNEY GENERAL DESIGNEE TAYLOR answered that he believes it is a separation of powers issue. He explained that the Alaska Disaster Act, as written, gives the governor the authority to institute a disaster declaration for 30 days, which is exactly what the governor did. The legislature could consider any policy concerns on whether the governor appropriately used his authority under the Act to issue a succession of disaster declarations. If so, the legislature could amend the Alaska Disaster Act, he said.

SENATOR KIEHL stated that the Alaska Disaster Act limits the governor to issue one declaration per condition. He related a hypothetical situation in which geologists issued a warning of potential volcanic action for many volcanoes throughout Alaska. He asked whether the governor could issue a new disaster declaration if the legislature did not convene and geologists found the presence of ash at one of these volcanoes.

ATTORNEY GENERAL DESIGNEE TAYLOR acknowledged that the Alaska Disaster Act was an imperfect tool for the COVID-19 epidemic. Under the plain reading of the Act, the governor can issue a declaration for 30 days. The COVID-19 epidemic spanned 18 months, with changing circumstances that needed constant monitoring. The governor made ongoing decisions on the pandemic. The governor had the authority to declare the additional disaster declarations. The legislature had the authority to call itself into session to act on those disaster declarations. Although the process was not ideal, he hoped that the legislature and the governor would address these issues in the coming months. He characterized the problem as a hole in the Alaska Disaster Act.

[1:55:39 PM](#)

CHAIR REINBOLD asked if Alaska's laws should be arbitrarily applied with winners and losers.

ATTORNEY GENERAL DESIGNEE TAYLOR responded that every law somewhat chooses winners and losers. For example, a law governing new taxi services by its very nature allows certain people to open a business but not others. The legislature takes

those policy considerations into account and tries to craft laws that are fair and equitable to all Alaskans.

1:56:33 PM

CHAIR REINBOLD asked how the essential and non-essential workers were determined, how the mandates were applied, and if the executive branch should identify essential and non-essential workers.

ATTORNEY GENERAL DESIGNEE TAYLOR responded that identifying essential and non-essential workers is a policy decision. However, as attorney general, he does not offer opinions on policy decisions. Given the nature of the pandemic, tough calls needed to be made. The governor likely weighed the positive and negative options and decided what he thought best served Alaskans. Since the governor answers to the voters of the state, voters can react to the governor's decisions at the polls.

ATTORNEY GENERAL DESIGNEE TAYLOR, in further response, explained that his role as attorney general is to apply the law and defend the laws when they are challenged. He said the Alaska Disaster Act mandates had the effect of law.

1:59:05 PM

SENATOR SHOWER referred to an early comment that the legislature could have called itself into a special session. He pointed out that many legislators were not polled as to whether the legislature should call itself into session to act on the disaster declarations. However, many legislators would have liked an opportunity to do so. He related that legislators respond to their constituents and some businesses reported that the mandates were not equally applied. Some felt unfairly targeted or threatened with liquor or other license revocations if they did not close to control the pandemic. Some businesses, such as marijuana shops were allowed to remain open, but other small businesses or churches were required to close. Some small businesses did not survive the pandemic.

SENATOR SHOWER emphasized the need to debrief, that it will be important for the legislature and state to review policies and determine which laws and policies worked during the pandemic and amend statutes and policies to achieve a better outcome. He asked for the attorney general's commitment to help address these issues in the event other disasters occur.

ATTORNEY GENERAL DESIGNEE TAYLOR agreed that it would be critical for the legislature and the executive branch to hold

those discussions and develop recommended changes to the Alaska Disaster Act to achieve a better outcome and process.

2:02:34 PM

SENATOR SHOWER asked he supports and will not oppose the efforts of the legislature to assert its responsibilities to review COVID-19 actions.

ATTORNEY GENERAL DESIGNEE TAYLOR answered that he supports that effort.

2:02:59 PM

SENATOR HUGHES echoed that the Alaska Disaster Act was not designed for an extended period. She expressed an interest in ensuring that the economic impacts are balanced with the health impacts in statute. She said it is one thing to keep everyone healthy but adverse effects to the economy must be avoided.

2:04:08 PM

CHAIR REINBOLD agreed. She expressed concern about the state health alerts' impact on religious liberties. She asked if he reviewed the state health alerts.

ATTORNEY GENERAL DESIGNEE TAYLOR responded that he may have seen them, but he did not officially review them.

2:04:34 PM

CHAIR REINBOLD expressed concern with COVID-19 Health Alert 010 - Recommendations Regarding the Use of Cloth Face Coverings issued on April 3, 2020. This alert highly recommended all Alaskans wear cloth face coverings in public settings when other social distancing measures were difficult to maintain. She asked whether the governor's July 22, 2020, mask mandate was still in place.

ATTORNEY GENERAL DESIGNEE TAYLOR responded that the governor did not issue a statewide mask mandate.

CHAIR REINBOLD further clarified that her question related to the governor's mask mandate for state workers and people who enter state-owned buildings and facilities.

ATTORNEY GENERAL DESIGNEE TAYLOR offered his belief that this mandate was still in place.

CHAIR REINBOLD expressed concern about specific health mandates imposed at churches requiring face masks, which detailed

guidelines related to specific church activities. She offered her belief this health mandate infringed upon religious liberties. She asked for his views on infringements on religious liberties, including limiting the number of people who can gather at church services and functions.

ATTORNEY GENERAL DESIGNEE TAYLOR answered that like any protected class such as religious liberties, heightened scrutiny should be applied. This is exactly what the courts will do, he said. During a court proceeding, the court will determine whether the disaster declaration or mandate was narrowly tailored to address the state's interest and that the interest was great enough to infringe on a person's religious freedom or other protected freedom.

[2:07:18 PM](#)

CHAIR REINBOLD pressed for a yes or no answer about whether first amendment religious freedoms could be infringed upon.

ATTORNEY GENERAL DESIGNEE TAYLOR answered that there are times when personal liberties, including religious freedoms, can be infringed upon.

CHAIR REINBOLD asked if he supported the mask and other restrictions imposed at churches.

ATTORNEY GENERAL DESIGNEE TAYLOR reminded members that he does not make policy calls; instead, he reviews the governor's policies and the administration's policies. For example, people have freedom of speech rights, but they cannot yell "fire" in a full theater. The courts recognize certain limitations can be imposed to curtail some religious freedoms. He characterized these curtailed activities as wise ones, falling under the separation of powers. The courts ultimately decide whether laws overly burden its citizens and Alaska's residents. He acknowledged that citizens sometimes experience infringements on their freedoms given those checks and balances.

SENATOR HUGHES clarified that the state did not mandate that people wear cloth masks in churches. The health alert recommended people wear masks.

CHAIR REINBOLD offered her belief that the governor mentioned cloth coverings either in his mandates or in press releases hundreds of times.

[2:09:24 PM](#)

CHAIR REINBOLD asked whether he reviewed the federal court cases to evaluate if the mandates are applied lawfully and in the State of Alaska's best interests, such as the U.S. Circuit Court Jew Ho v. Williamson (1900) case.

ATTORNEY GENERAL DESIGNEE TAYLOR related the purpose of his review of mandates was to determine any apparent conflict with the U.S. Supreme Court and Alaska Supreme Court.

SENATOR SHOWER asked whether the Fourteenth Amendment due process rights were protected when the governor issued disaster declarations and mandates. He related the importance of knowing any advice he gave or would give the governor in these matters. As previously noted, some businesses closed down.

ATTORNEY GENERAL DESIGNEE TAYLOR answered that by its very nature, the Alaska Disaster Act removes some due process rights and safeguards in order to address an impending epidemic or disaster.

[2:12:59 PM](#)

SENATOR SHOWER asked if another similar disaster were to occur, whether he would advise the governor to take a different approach. He pointed out that COVID-19 declarations and mandates adversely impacted some businesses but not others.

ATTORNEY GENERAL DESIGNEE TAYLOR responded that many cases are before the courts relating to these very subjects. Those decisions will further define and clarify when the state can infringe on citizens' rights. As previously stated, he said he hoped the legislature would address some issues statutorily. He said one change he would make would be to advise the governor to initially conduct a constitutional review rather than later on in the process.

[2:15:42 PM](#)

CHAIR REINBOLD commented that the mandates affected many areas, such as closing schools, including private schools. She said she was not a fan of winners and losers.

ATTORNEY GENERAL DESIGNEE TAYLOR responded that the governor has not issued a statewide mandate affecting the average citizen since May 2020. There were disaster declaration provisions to address specific sectors, such as the commercial fishing industry, due to its vital nature to the economic viability in Alaska. Most people are familiar with airport testing, which is currently discretionary. Thus, there has been a considerable

amount of time without an overarching mandate from the governor, he said.

[2:17:04 PM](#)

CHAIR REINBOLD highlighted the numerous mandates [and guidelines in attachments] A through H for [the COVID-19 Health] Mandate 16, issued on April 22, 2020, that impacted Alaskans.

CHAIR REINBOLD repeated her earlier question about whether he had reviewed *Jew Ho v. Williamson* (1900) the U.S. Circuit Court decision. Approximately 15,000 Chinese residents in San Francisco were quarantined to contain the bubonic plague. The court held this was unconstitutional on the grounds that it was unreasonable, unjust, and oppressive. *Jew Ho* demonstrates that quarantine can be used as an instrument of prejudice and impact vulnerable populations. She pointed out that instances are cropping up in which people with vaccines can access services that unvaccinated people cannot obtain. She asked him to comment on this case.

ATTORNEY GENERAL DESIGNEE TAYLOR responded that the court got it right since government cannot target a specific group of people when managing a pandemic.

CHAIR REINBOLD asked if he would protect and defend Alaskans' right not to get the mRNA vaccine as a condition of employment or receive services.

ATTORNEY GENERAL DESIGNEE TAYLOR responded that it was the governor's intent that obtaining a vaccine is voluntary. However, private businesses may decide requirements that employees must follow.

[2:20:45 PM](#)

SENATOR HUGHES remarked that private schools were never mandated to close and many of them did very well.

CHAIR REINBOLD said she would not debate the issue. She asked whether he knew that mRNA vaccines require informed consent and cannot be mandated under federal law.

ATTORNEY GENERAL DESIGNEE TAYLOR stated his intent to review the law and follow the law.

[2:22:35 PM](#)

SENATOR KIEHL recalled holding conversations with Mr. Taylor on the case of *Janus v. American Federation of State, County, and*

Municipal Employees. He said he agrees to disagree on the merits of the case but pointed out the separation of powers question relates to the executive branch funding for efforts on that case. He asked how the executive branch can continue to exceed the amount for outside contracts when the legislature has the power to appropriate. Last year, the legislature established a budget structure for expenditures on outside contracts.

ATTORNEY GENERAL DESIGNEE TAYLOR agreed that this is a separation of powers issue. He said he did not make the decision to get involved in the litigation or to use outside counsel. The Alaska Supreme Court has made it clear that the attorney general has the authority to bring lawsuits in the public's interest. That is what occurred with the governor's prior two predecessors. He said he is aware of the confinement clause, which does not allow the legislature to use an appropriation bill to administer a state program. He suggested there might be issues with that aspect. He said he has asked DOL to review those decisions and make recommendations. Based on this review, he might ultimately decide that the appropriation restriction is necessary and stop the practice. He offered his willingness to do so if that is what the law states. Currently, he is awaiting that decision, but he is fully prepared to decide independently of the ones his predecessors made, depending on the report.

2:25:08 PM

CHAIR REINBOLD referred to Health Alert or mandate 013 issued on April 9, 2020. She read, "The statewide school closure of all K-12 and private schools is being extended from May 1, 2020, to the end of the 2019-2020 school year."

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SENATOR MYERS related that some executive orders and federal laws have recently passed. He asked for DOL's efforts to push back on federal overreach.

ATTORNEY GENERAL DESIGNEE TAYLOR responded that it is essential that the state respond. He opined that the state's economic viability is at risk over the next four years. The governor's budget proposal provides funds to research the legal issues and use outside counsel when necessary. DOL has reviewed executive orders. The agencies will engage in a rulemaking process and DOL will participate. If DOL finds that the rules violate the law, the department will litigate. Currently, the state joined a Louisiana lawsuit regarding a proposed moratorium on leasing for onshore oil and gas exploration. DOL also intervened in a

Wyoming case to address whether presidential executive orders violated administrative procedures.

[2:28:47 PM](#)

SENATOR SHOWER highlighted that the legislature is considering measures related to significant voter rights issues and other bills related to states' rights. He asked what efforts DOL would make to address federal overreach and protect Alaska's uniqueness.

ATTORNEY GENERAL DESIGNEE TAYLOR answered that DOL would be actively engaged to protect statehood rights. For example, DOL has intervened in the challenge to a final [Alaska Roadless Rule] exempting the Tongass National Forest [from the 2001 provision] that prohibited road construction and timber harvests. Alaska is one of many states with resources that make it economically viable to live. DOL continues to work collectively with other states to address these issues, he said.

[2:32:11 PM](#)

SENATOR KIEHL turned to major drinking water contamination caused by per and poly-fluoroalkyl substances (PFAS) related to use of fire-fighting foams. He asked if he would work with the Department of Environmental Conservation (DEC) to address the costs and burdens on DEC staff.

ATTORNEY GENERAL DESIGNEE TAYLOR agreed that PFAS foam testing is a significant concern to those living near airports where PFAS testing took place. He stated the issue is complex. DOL is currently engaged in several litigation cases related to PFAS, including a lawsuit filed against the manufacturer of PFAS. The litigation is costly since it requires outside experts and studies, so it will likely be lengthy. He said he hopes for a good outcome.

[2:33:55 PM](#)

SENATOR HUGHES recalled several letters from other states regarding federal overreach, including West Virginia, Missouri, Texas and Montana. Alaska and Hawaii are currently exempted from the Clean Power Act, which might be at risk with the new administration. She asked what efforts the department would make on this issue.

ATTORNEY GENERAL DESIGNEE TAYLOR responded that this is a critical issue. He acknowledged that the Biden administration has made it clear that it will establish its own rules. He highlighted that DOL is unsure whether Alaska will remain

exempt, but the department will work to do so. DOL is closely monitoring this issue, he said.

SENATOR HUGHES expressed an interest in obtaining his ideas on addressing sexual assault crimes in Alaska.

[2:36:14 PM](#)

CHAIR REINBOLD stated her intention to bring Mr. Taylor back before the committee to elaborate on these issues further.

CHAIR REINBOLD said she met with Mr. Taylor about three weeks ago. At that time, she asked whether he had any input on the [February 18, 2021] letter to her from Governor Dunleavy.

ATTORNEY GENERAL DESIGNEE TAYLOR said he often reviews letters from Governor Dunleavy before they are sent.

CHAIR REINBOLD pointed out her concern that he does not have a background in criminal law, including prosecution.

CHAIR REINBOLD then read a portion of Art. 3, Sec. 20 of the Alaska Constitution:

The governor may proclaim martial law when the public safety requires it in case of rebellion or actual or imminent invasion. Martial law shall not continue for longer than twenty days without the approval of a majority of the members of the legislature in joint session

CHAIR REINBOLD, in response to Governor Dunleavy's letter, said she denies ever stating that the Governor declared martial law. She suggested that the governor may have been confused about her comments on the 14 pages of regulations and statutes that were suspended, along with the numerous mandates.

CHAIR REINBOLD said Governor Dunleavy's accusations were significant allegations. She asked Mr. Taylor if he would work with her to have that letter retracted because, in her view, none of it is substantiated. She said he did not need to respond.

ATTORNEY GENERAL DESIGNEE TAYLOR acknowledged her concerns.

[2:38:19 PM](#)

CHAIR REINBOLD asked if he acknowledged by law and the separation of powers that the legislative body has the sole

authority granted by the state constitution to create law and the executive branch is to uphold and execute Alaska law.

ATTORNEY GENERAL DESIGNEE TAYLOR agreed that the primary responsibility of the legislative branch is to enact law and it is the principal responsibility of the executive branch to enforce that law.

CHAIR REINBOLD restated the question.

ATTORNEY GENERAL DESIGNEE TAYLOR responded that he agrees that she described the general relationship between the legislature and the executive branch but that this process has some checks and balances. For example, he said the governor has veto power, affecting which bills become law.

[2:39:42 PM](#)

SENATOR KIEHL turned to the constitutional provision that allows the legislature to sweep funds into the Constitutional Budget Reserve Account. Several years ago, the executive branch reinterpreted which accounts were subject to the sweep. He asked whether he agreed with the longstanding view that the Power Cost Equalization (PCE) endowment is not subject to the sweep. Second, he asked if he could commit to communicating with the legislature when the executive branch intends to reinterpret the longstanding understanding of an issue such as PCE.

ATTORNEY GENERAL DESIGNEE TAYLOR answered that the PCE issue has arisen in his discussions with numerous legislators. He acknowledged DOL is currently examining the issue to determine the department's position. He said he likes to discuss and work through issues. The last course of action should be litigation. He expressed his willingness to hold discussions with the legislature. However, sometimes policy calls must be made. He said he's not an elected official, so he does not make policy calls; the chief executive and cabinet members make those.

[2:42:20 PM](#)

CHAIR REINBOLD asked if the judicial branch or executive branch of state government has any lawmaking authority under the Alaska Constitution.

ATTORNEY GENERAL DESIGNEE TAYLOR answered no.

CHAIR REINBOLD asked what constitutional or legal foundations he would consider regarding the authority of the governor to issue executive orders limiting public and private gatherings, closing

or imposing restrictions on businesses and regulating a broad variety of other aspects of the daily life of citizens for the greater good of Alaskans.

ATTORNEY GENERAL DESIGNEE TAYLOR, after first clarifying the question, opined that the legislature deferred its authority to the governor for some of the situations related to the declarations issued, which are laid out in the Alaska Disaster Act. He explained that he would first review the Alaska Disaster Act itself, consider Alaska case law and case law from other states, if necessary, to best advise the governor in any given situation. In terms of the COVID-19 pandemic, there were many first impressions related to the disaster declarations. In those instances, he gave the best advice possible, based on what was known at the time. It is up to the governor to decide whether to heed his advice or to go in a different direction.

2:45:10 PM

CHAIR REINBOLD asked whether the governor's emergency powers pertaining to the governor's mandates resulting in the direct deprivation of citizens' rights is compatible or incompatible with the Alaska Constitution.

ATTORNEY GENERAL DESIGNEE TAYLOR answered that it is compatible with Alaska Constitution, case law and the statutory framework.

CHAIR REINBOLD asked whether the U.S. Constitution and Alaska Constitution represent the supreme law of the land.

ATTORNEY GENERAL DESIGNEE TAYLOR answered absolutely.

2:45:56 PM

SENATOR SHOWER said he understood Mr. Taylor to say that the legislature delegated its authority to the administration concerning the disaster declarations. He asked what steps should be taken to better address the issues that arose between the governor and the legislature.

ATTORNEY GENERAL DESIGNEE TAYLOR responded that at the time the Alaska Disaster Act passed, it acknowledged that the legislature's pace and power is slow given that it takes time for the legislature to gain consensus. Thus, the Alaska Disaster Act recognized that the legislature must be bypassed at times to deal with disasters. He suggested that the legislature could fine-tune the Alaska Disaster Act.

SENATOR SHOWER asked his opinion on whether part of the problem with the disaster declaration was that the legislature let it go on for too long without addressing it.

ATTORNEY GENERAL DESIGNEE TAYLOR answered that one option always available to the legislature is to remain silent. The legislature can decide not to take issue. He characterized the legislature's inaction as a policy call.

[2:49:02 PM](#)

CHAIR REINBOLD recalled that he found the proclaimed emergency powers of the governor as it pertains to the mandates compatible with the Alaska Constitution.

ATTORNEY GENERAL DESIGNEE TAYLOR answered yes.

CHAIR REINBOLD remarked that she sees it differently and found numerous violations of the Alaska Constitution.

[2:49:28 PM](#)

CHAIR REINBOLD said she was a no vote regarding the disaster declarations. She disagreed that the disaster declaration chaos was the legislature's fault. She said the legislature was not called into special session. She offered her view that the legislature has the responsibility to write laws, but it was not consulted on health mandates.

SENATOR SHOWER stated that he voted no on Senate Bill 241, Extending COVID-19 Declaration Relief. He offered his view that the legislature should have been engaged, but it was not. He clarified he was not blaming individual legislators. However, the legislature had the ability and the authority to take action, but it did not.

CHAIR REINBOLD maintained her view that it was not the legislature's fault.

[2:52:13 PM](#)

SENATOR KIEHL expressed concern with his interpretation that no action by the legislature ends something. This seemed to imply that if the legislature does not affirmatively act, the governor could fill the void with whatever action he desired. He pointed out that the governor had the power to convene the legislature. However, by not exercising that constitutional power, the governor set up a statutory consequence and acted contrary to it. He asked him to identify the principle under which the administration operates.

ATTORNEY GENERAL DESIGNEE TAYLOR responded that he did not mean to imply that legislative inaction allows the executive branch or judiciary to act in any way it wants. However, there are some instances where legislative inaction does have the force of law.

[2:54:10 PM](#)

CHAIR REINBOLD asked Mr. Taylor to come back before the committee to address criminal law issues.

ATTORNEY GENERAL DESIGNEE TAYLOR agreed to do so.

[2:54:52 PM](#)

SENATOR HUGHES stated that she was on emergency leave when the vote on Senate Bill 241 occurred. She offered her view that the executive branch and the legislature must assume some responsibility. The Alaska Disaster Act has been law for decades and the legislature has not taken any action. She related that she reviewed the statutes and the attorney general provides advice and responds to legislative proposals. She said she is grateful he is willing to work with the legislature.

ATTORNEY GENERAL DESIGNEE TAYLOR responded that he would be happy to do so.

[2:55:33 PM](#)

SENATOR REINBOLD said she did not vote yes on Senate Bill 241 due to her deep concerns about the bill. She asked if he would review and evaluate during extraordinary times whether all mandates the governor issues are based on the law to protect civil liberties and for the good of the people.

ATTORNEY GENERAL DESIGNEE TAYLOR responded that is what he is tasked to do, which he will do to the best of his ability.

[2:57:20 PM](#)

CHAIR REINBOLD opened public testimony on the confirmation hearing for Treg Taylor.

[2:57:43 PM](#)

MIKE GERAGHTY, Attorney; representing self, Anchorage, Alaska, stated that he is an attorney for an Anchorage law firm, Holland & Hart, but he is representing himself today. He said he previously served as attorney general for the Parnell administration from 2012 to 2014. He said he hired Mr. Taylor after graduating from law school in 2004. He worked as an associate for the firm for approximately five years, during

which time he worked closely with him on some litigation. He characterized Mr. Taylor as a hard worker, a good attorney and a valued member of the firm. He left the practice to serve in the private sector as an in-house attorney. He said he has always known Mr. Taylor as an honest and ethical attorney. He always tried to do the right thing. He offered his view that no one comes into a job knowing all the answers. An attorney general has the considerable resources of DOL to assist with any decisions. He opined that Mr. Taylor would draw on that knowledge. He opined that Mr. Taylor would not do anything to tarnish the attorney general's office. He offered his support for Treg Taylor and urged members to vote to forward his confirmation.

[3:00:42 PM](#)

CHARLES MCKEE, representing self, Anchorage, Alaska, described a personal dispute he wished the attorney general to consider that had no relevance to the confirmation hearing.

[3:02:59 PM](#)

ANDREE MCLEOD, Good Government Director, Alaska Public Interest Research Group, Anchorage, Alaska, spoke in opposition to Treg Taylor. She stated that Mr. Taylor came before the House Judiciary Committee twice. She offered her view that his statements made clear that he should not be confirmed as attorney general because of his insistence on violating Alaska law, public trust and the trust of Alaskans. Although he makes promises, his actions and repeated positions related to Ben Stevens leaving the governor's office to work for Conoco Phillips demonstrate that he either does not understand Alaska's laws or he does understand them and has purposefully, willfully and intentionally chosen to contradict these laws.

MS. MCLEOD said the laws in question are clear and simple. The Alaska Executive Branch Ethics Act restricts certain activities for employees who work in the governor's office when they leave state service. It mandates restrictions of one or two years. A governor may waive those restrictions by following a process. It must be written and submitted to the attorney general for approval or disapproval. Unfortunately, that was not done in this case. Mr. Taylor insists it is not necessary until Mr. Stevens believes he has a conflict of interest and contacts the state to obtain a waiver. Many former employees have requested waivers and followed the laws. These employees knew that an appearance of a conflict of interest must be taken seriously and that there are reasons for the required waiting periods. She

offered her view that Mr. Taylor misconstrued laws that were passed to protect the public interest.

CHAIR REINBOLD stated that Ms. McLeod's time was up. However, she could submit written comments to the committee.

[3:06:34 PM](#)

THERESA OBERMEYER, representing self, Anchorage, Alaska, said Ms. McLeod covered many of the issues related to Ben Stevens. She referred to AS 39.52.180 for specific ethical guidelines for state employees, which she hoped members would review. She urged members not to confirm Mr. Taylor.

[3:08:37 PM](#)

DAVID CARTER, representing self, Anchorage, Alaska, stated that he is a retired attorney. He said Alaskans want and deserve honesty, integrity and transparency from their elected officials and senior executive branch officials. He said Alaskans want their legislators and attorneys general to easily recognize and reject conflicts of interest. Mr. Taylor moved from the Arctic Slope Regional Corporation (ASRC) to the attorney general's office and Ben Stevens moved from the governor's office to Conoco Phillips. Mr. Stevens accepted \$1,000 per week while he was a sitting Senator. Alaskans do not want to reward that behavior or those who look the other way. He urged members not to confirm Treg Taylor as attorney general.

[3:10:46 PM](#)

JULIE SMYTH, representing self, Fairbanks, Alaska, said she is an Inupiaq, raised in the foster care system in Fairbanks. She has heard family members relate the impacts and struggles of systemic racism and trauma. Her grandparents were sent away to boarding schools. Laws can be written to target indigenous people, such as Inupiat. Mr. Treg Taylor recently stated that the March 16, 2021, shootings of six Asian women in Atlanta were not racially motivated, that the shooter was having a bad day. She urged members not to confirm Mr. Taylor.

[3:13:49 PM](#)

CHAIR REINBOLD closed public testimony on the confirmation hearing for Mr. Taylor, Attorney General, Department of Law.

[The confirmation for Treg Taylor, the Governor's appointee as attorney general was held in committee.

[3:15:16 PM](#)

There being no further business to come before the committee,
Chair Reinbold adjourned the Senate Judiciary Standing Committee
meeting at 3:15 p.m.